IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS 1343 OF 2006

IN

SUIT NO. 1165 OF 1979

The National Rayon Corporation Limited & Anr. .. Plaintiffs

versus

The New India Assurance Co.Ltd. and others .. Defendants

...

Mr.Satish Shah with Mr.Sujit Suryavanshi, Mr.L.Rubens and Mr.S. Indraneel i/b M/s.Vigil Juris for the plaintiff.

Mr.F. Dubash i/b Mulla & Mulla for defendnant no.1.

CORAM : D.G. KARNIK,J.

DATED : 22nd February 2007.

P.C.:

1. Heard counsel for the parties. This Chamber Summons is taken out by the plaintiff for an order to recast the issues.

2. Counsel for the defendant strongly opposes

the Chamber Summons and submits that the issues need no recast. He submits that the entire evidence has been led by the parties and as the plaintiff has failed to substantiate the issues of which the burden as on him, to get over that lapse the plaintiff is seeking modification of the issues by proposing to delete the issues of which the burden is on him. In the circumstances, he submits that the Chamber Summons be dismissed.

3. Learned counsel for the defendant also invites my attention to the earlier Chamber Summons no.834 of 2005 which was taken out earlier by the plaintiff itself for recasting of the issues. He submits that the plaintiff itself had proposed certain issues and by an order dated 7th July 2005, the said Chamber Summons no.834 of 2005 was allowed and issues were re-framed and recast as suggested by the plaintiff, save and except issue no.14 which the court declined to frame. Now, the plaintiff seek modification of the very issues which were framed at its own request to be recast again with an oblique motive of deleting the issues which the plaintiff has not been able to prove.

4. Counsel for the defendant further submits that to change the issues after the entire evidence has been adduced would be unfair and would put the defendant in jeopardi. The parties have adduced the evidence on the basis of existing issues and not on the basis of the proposed new issues and therefore the issues should not be recast at this stage.

5. It is true that issues can be amended at any stage and even after the evidence is recorded. If the issues are amended after the evidence, parties can be given an opportunity of leading evidence on the amended issues. However in the facts and circumstances of the case, it would not be appropriate to adopt that course and recast the issues. The issues were once recast as suggested by the plaintiff itself by taking out the Chamber Summons no.834 of 2005. The parties went to trial on that basis and adduced evidence on those issues. Burden of proving many of the issues was on the plaintiff. After the evidence is recorded those issues cannot be deleted. In the circumstances, Chamber Summons is dismissed.

6. Authenticated copy is allowed.

D.G. KARNIK, J